



ARKANSAS JUDICIARY

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Rule 53. Masters.

(a) Appointment and Compensation. Subject to the limitations contained herein, each court in which an action is pending may appoint a special master therein. As used in this rule, the word "master" includes a referee, an auditor, an examiner, a commissioner and an assessor. The compensation to be allowed a master shall be fixed by the court and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain his report as security for his compensation; but, when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference. A reference to a master shall be the exception and not the rule. Reference shall be made in only those cases where there is no right to trial by jury or where such right has been waived. Except in matters of account and difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) Powers. The order of reference to a master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. The master shall cause a record to be made of the evidence offered and excluded.

(d) Proceedings.

(1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof, unless the order of reference otherwise provides, the master shall set a time and place for the first meeting of the parties or their attorneys to be held within the time specified by the court or otherwise within a reasonable time after receipt of the order of reference. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses. The parties may procure the attendance of witnesses before the master by the

issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear to give evidence, he may be punished as for a contempt and be subject to the consequences, penalties and remedies provided in Rules 37 and 45.

(3) Statement of Accounts. When matters of accounting are in issue before the master, he may prescribe the form in which the account shall be submitted and in any proper case may receive or require in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

(e) Report.

(1) Contents and Filing. The master shall prepare a report upon the matters submitted to him by the order of reference, and, if required to make findings of fact and conclusions of law, he shall set them forth in his report. He shall file the report with the clerk of the court and unless directed by the order of reference shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) Effect. The court shall accept the master's findings of fact unless clearly erroneous. Within 20 days after being served with notice of the filing of the report, any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(c). The court after hearing may adopt the report or modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) Stipulation as to Findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(4) Draft Report. Before filing his report, a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

Reporter's Notes to Rule 53: - 1. Rule 53 represents a merger of various provisions from FRCP 53 and prior Arkansas law. This rule does, however, contain several changes from federal and Arkansas law. The latter was codified as superseded Ark. Stat. Ann. 27-1801, et seq. (Repl. 1962), and permitted a reference to a master only in courts of equity. Under FRCP 53, both legal and equitable issues may be referred to a master regardless of whether a jury is involved. In *Re Peterson*, 253 U.S. 300, 40 S. Ct. 543 (1920). Under Rule 53, masters may be used in law courts, but only in cases where a jury trial has been waived.

2. Under this rule and under FRCP 53, the use of masters is the exception and should be used only in rare cases. *Arthur Murray, Inc. v. Oliver*, 364 F. 2d 28 (C.C.A. 8th, 1966), *Adventures in Good Eating, Inc. v. Best Places to Eat, Inc.*, 131 F. 2d 809 (C.C.A. 7th, 1942). Masters have been used sparingly in Arkansas although equity courts have had the discretionary power to appoint masters in complex accounting matters. *State ex rel. Purcell v. Nelson*, 246 Ark. 210, 438 S.W.2d 33 (1969).

3. Section (c) is substantially the same as FRCP 53(c) and defines the powers possessed by a master. These powers may be restricted by the referring court, but generally the master has the right to conduct hearings as if he were the judge sitting on the case. A record of the proceedings before the master is required under this section whereas the Federal Rule does not require that a record be made unless requested by a party. Superseded Ark. Stat. Ann. 27-

1806 (Repl. 1962) made a record mandatory and this requirement is brought forward in this rule.

4. Section (d) follows the Federal Rule regarding the conduct of the proceedings with the exception of the time limit contained therein. Under the latter, a meeting with the parties on their attorneys must be held within twenty days after the receipt of the referral by the master. Under this rule, the court may specify a time for such meeting and if none is specified, it must be held within a reasonable period of time following the referral.

5. Omitted from Section (e) of Rule 53 is FRCP 53(e)(3). Since masters are limited to non-jury situations under this rule, the federal provision is inapplicable. Otherwise, Section (e) is substantially the same as its federal counterpart. Under (e)(2), the findings of a master are binding upon the court unless clearly erroneous. A finding is clearly erroneous when, although there is evidence to support it, the court, on the entire evidence is left with the definite and firm conviction that a mistake has been made by the master. *McGraw Edison Co. v. Central Transformer Corp.*, 196 F. Supp. 664 (D.C. Ark., 1961); *United States v. 620.98 Acres of Land*, 255 F. Supp. 427 (D.D. Ark., 1966). The substantial evidence rule is not the test. *WRB Corp. v. Geer*, 313 F. 2d 750 (C.C.A. 5th, 1963). Under prior Arkansas law, equity courts were not required to accept the master's report. *Griffin v. Isgrig*, 227 Ark. 931, 302 S.W.2d 777 (1957); *Ferguson v. Rogers*, 129 Ark. 197, 195 S.W. 22 (1917). Thus, this rule modifies prior Arkansas law by making the master's report mandatory unless it is clearly erroneous. Also, under this rule, a party has twenty days within which to make objection to the report which is an increase over the ten days allowed under FRCP 53.

6. Sections (e)(3) and (e)(4) are identical to Sections (e)(4) and (e)(5) of the Federal Rule. Superseded Ark. Stat. Ann. 27-1813 (Repl. 1962) provided that a reference to a master by consent of the parties did not make the findings any more conclusive. Under this rule, however, where the parties stipulate as to the binding effect of the master's findings, only questions of law may thereafter be considered.

Associated Court Rules:

Rules of Civil Procedure

Group Title:

VI. Trials

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